

REMARKS

After careful consideration of the outstanding Final Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

The only issue presented in the Final Office Action of April 2, 2003 is the rejection of claims 1 through 9 and 11 through 18 "under 35 U.S.C. 103(a) as being unpatentable over Erba (EP 847,930) in view of Hatakeyama et al. (US 4,238,042)." In making this rejection, the Examiner stated: "Erba teaches the claimed closure except for an upstanding rim portion of a sealing flange which cams along the closure to fold toward the sealing flange upon application of the closure to a container." The later is said to be taught by Hatakeyama and for purposes of this discussion, it will be assumed that the latter is a correct assumption on the part of the Examiner. It will also be assumed that the combined teachings of Erba and Hatakeyama are just as expressed by the Examiner. The simplified issue then becomes whether all of the limitations of claims 1 through 9 and 11 through 18 are rendered obvious by a combination of the teachings of the latter prior art patents?

The undersigned turns to twice amended claim 3 which called for "a spacer (42) between opposed surfaces of the sealing flange (31) and the closure shell (2A); and the spacer (42) is arranged to prevent the upstanding rim (40) from folding completely flat." The latter language has been retained in claim 3 but is broadly set forth in claim 1 as "means (42) radially inboard of said upstanding rim (40) for preventing said upstanding rim (40) from folding flat." The undersigned respectfully submits that the Examiner never made mention of the subject matter of claim 3 or comparable structure in either applied patent or a combination thereof.

By the Examiner's own statement, there is an allegation that "Erba teaches the claimed closure except for an upstanding rim portion." If the latter is allegedly a correct statement of fact, the undersigned questions where in the Erba patent there is found either the "spacer (42) between opposed surfaces of the sealing flange (31) and the closure shell (2A)" of claim 3 or the broader recited "means (42) radially inboard of said upstanding rim (40) for preventing said upstanding rim (40) from folding flat"? The Examiner identifies the rim portion in Erba as "the outermost unnumbered portion of part 23" and by definition the part 23 must be considered by the Examiner to be equivalent to the claimed liner (6). If such is the position of the Examiner, the upstanding rim portion of the part 23 is not folded at any time for any purpose whatever and there is no reason for folding the same in any fashion, particularly "to provide a folding rim for biasing a liner against a container mouth." The upstanding rim portion/ outermost unnumbered portion of part 23 of Erba does not create a seal with the mouth of a container.

If it was the Examiner's intention to equate the element 8 of the Erba patent to applicants' claimed liner, the flange 9 thereof is not upstanding and does not fold inwardly upon the application of the "sealing disc 23" thereto. Furthermore, the function of the components 23, 8 of the Erba patent and particularly the "flexible sealing lip 24" is to seal the sealing disc 23 through the flexible sealing lip 24 to the exterior unnumbered upper tapered surface of the flange 9 absent any bending or folding whatever between the latter components. In other words, the sealing lip 24 may overlay the mouth of the container but it does not fold. The flange 9 may overlie the mouth of a container, but any folding thereof is outward and downward, not inward as

claimed. Since the liner 23 of Erba has only a downward directed non-foldable sealing lip 24, precisely what portion thereof does the Examiner intended to construct such as it can be folded inwardly by the closure shell 20?

There are projections 27 associated with the element 8 which obviously prevent downward and outward folding of the flange 9, but these have nothing to do with sealing and instead are designed "for reducing the bending stroke" during machine assembly by limiting "the flexion of the predeterminedly breaking annular wall 13, within levels being compatible with the material in use, to prevent it from being broken by a mounting stress." (See column 6, lines 8-12.) Therefore, upon assembly of the closure to a container, the wall 13 will not be broken because of the projection/projections 27. These have nothing to do with limiting inward folding of an upstanding outermost terminal rim of a closure liner.

Since the prior art is totally devoid of any means whatever for preventing an upstanding rim from folding flat in the manner recited in each of independent claims 1, 6 and 11 by the recited "means (42) ... for preventing," etc., the withdrawal of the rejection of these claims and the formal allowance thereof is believed proper and would be most appreciated.

Obviously, the allowance depending from the independent claims is also in order and would be respectfully requested.

The undersigned has made a bonafide effort to respond to the outstanding Final Office Action, and each of the claims clearly distinguish over any combination of the prior art utilized by the Examiner at page 2, paragraph 2 of the outstanding Office Action in the obviousness rejection (35 U.S.C. § 103(a)). Accordingly, unless the Examiner allows all of the claims

of record upon next considering this amendment, she is requested to telephone the undersigned in order that a personal interview with the Examiner can be arranged. The undersigned honestly does not understand the basis for the combination of the Erba and Hatakeyama patents, other than such was gleaned through hindsight from applicants' disclosure. The prior art does not teach, suggest, motivate or render obvious the approach taken by the Examiner in the Section 103(a) rejection, and there is no motivation for the combination of these two patents. Applicants clearly are believed entitled to the protection which would be afforded by the claims now of record which, once again, clearly distinguish the present invention over the prior art. Accordingly, the formal allowance of all of the claims now of record is herewith again respectfully requested.

Respectfully submitted,

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